

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

TERRELL L. TENSLEY, #1001727,

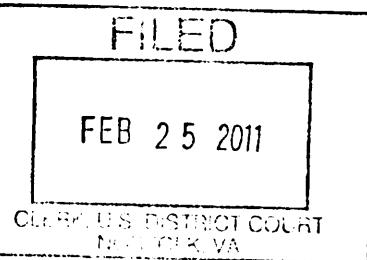
Petitioner,

v.

Case No. 2:10cv347

HAROLD W. CLARKE, Director of the
Virginia Department of Corrections,

Respondent.



FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2254. The petition alleges violations of federal rights pertaining to Petitioner's conviction in the Circuit Court of Stafford County, Virginia, of attempted murder, two counts of aggravated malicious wounding, conspiracy to commit a felony, three counts of use of a firearm in the commission of a felony, three counts of unlawful wounding during the commission of a felony, maliciously discharging a firearm at an occupied building, two counts of brandishing a firearm, and discharge of a firearm in a public place, as a result of which he was sentenced to serve a total of 105 years in the Virginia penal system, with 55 years suspended.

The matter was referred to a United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C),

Rule 72(b) of the Federal Rules of Civil Procedure, and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia for report and recommendation. The report of the magistrate judge was filed on December 29, 2010, recommending that the petition be denied and dismissed. By copy of the report, each party was advised of his right to file written objections to the findings and recommendations made by the magistrate judge. On January 21, 2011, the Court received the petitioner's written objections.¹ (ECF No. 13.) The respondent filed no response to the petitioner's objections.

The petitioner's objection simply reiterates arguments from his petition on the merits of his claim that his conviction for aggravated malicious wounding was based on insufficient evidence with respect to proof that the victim suffered a permanent and substantial impairment, an essential element of that crime.² As the magistrate judge noted in his report, this claim was denied on the merits on direct appeal to the Virginia Court of Appeals. There is nothing in the record, nor has petitioner identified

¹ The objections were accompanied by the petitioner's certification stating that the objections were deposited in the prison mail system on January 18, 2011. Accordingly, the objections shall be deemed timely filed pursuant to Rule 3(d) of the Rules Governing Section 2254 Cases in the United States District Courts (following 28 U.S.C. § 2254).

² The petitioner does not object to the magistrate judge's report with respect to his other claims.

anything in his objection, to suggest that this adjudication on the merits by the Virginia Court of Appeals was contrary to, or involved an unreasonable application of, clearly established federal law, nor that it resulted in a decision that was based on an unreasonable determination of the facts. Accordingly, the petitioner's objection is OVERRULED.

The Court, having reviewed the record, does hereby ADOPT AND APPROVE the findings and recommendations set forth in the report of the United States Magistrate Judge filed on December 29, 2010 (ECF No. 10), and it is, therefore, ORDERED that the petition be DENIED AND DISMISSED WITH PREJUDICE for the reasons stated in the report. Adopting the recommendations in the magistrate judge's report, it is ORDERED that Respondent's Motion to Dismiss (ECF No. 6) be GRANTED. It is further ORDERED that judgment be entered in favor of Respondent.

Petitioner may appeal from the judgment entered pursuant to this final order by filing a written notice of appeal with the Clerk of this Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty (30) days from the date of entry of such judgment. Petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Therefore, the Court, pursuant to Rule 22(b) of the Federal Rules of Appellate

Procedure, declines to issue a certificate of appealability.

See Miller-El v. Cockrell, 537 U.S. 322, 335-36 (2003).

The Clerk shall mail a copy of this Final Order to Petitioner and to counsel of record for Respondent.


Raymond A. Jackson
United States District Judge
UNITED STATES DISTRICT JUDGE

Norfolk, Virginia
February 23 , 2011